

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-333
SENATE BILL 324

AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION; TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF ALCOHOLIC BEVERAGES AT RETAIL; AND TO AUTHORIZE THE LIMITED TRANSFER OF WINE BY ON-PREMISES WINE PERMITTEES UNDER COMMON OWNERSHIP OR CONTROL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-109(b) reads as rewritten:

"(b) ~~Armed Forces Installation~~Installation and Indian Country Lands. – No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to an armed forces installation within this State if those alcoholic beverages are for resale on the installation or to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians."

SECTION 2. G.S. 18B-203(a)(17) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

...

(17) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the ~~installation~~installation and to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians.

...."

SECTION 3. Article 1 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-112. Tribal alcoholic beverage control.

(a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this Chapter, except for those made applicable by this section. The Eastern Band of Cherokee Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable to the tribe by this section, and such ordinance shall be approved by the Secretary of the United States Department of the Interior and published in the Federal Register accordingly. The Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote was held, the activity shall be deemed authorized by this section. For the purposes of this section, the tribal alcoholic beverage control commission shall possess the same powers and authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any section of this Chapter made applicable to the tribe by this section.



(b) Compliance Required. – The Eastern Band of Cherokee Indians shall comply with the following provisions of this Chapter to the extent they apply to or can be made applicable to the tribe:

- (1) The following provisions of Article 1. – General Provisions.
 - a. G.S. 18B-101(4), (7), (7c), (9), (10), (11), (12), (12a), (13), (14) (14a), (14b), and (15).
 - b. G.S. 18B-102.1.
 - c. G.S. 18B-104.
 - d. G.S. 18B-105, except that this section shall not apply to any establishment where gaming is permitted under a State compact and pursuant to federal law.
 - e. G.S. 18B-109(b).
 - f. G.S. 18B-110.
 - g. G.S. 18B-111.
 - h. G.S. 18B-112.
- (2) Article 1A. – Compensation for Injury Caused by Sales to Underage Persons, to the extent it applies to retail establishments or the tribal alcoholic beverage control commission if it operates ABC stores, or any other permitted establishment, at retail pursuant to the provisions of this section.
- (3) Article 3. – Sale, Possession, and Consumption, except for G.S. 18B-308 and G.S. 18B-309.
- (4) Article 4. – Transportation.
- (5) Article 5. – Enforcement, except for G.S. 18B-500 and G.S. 18B-501.
- (6) Article 9. – Issuance of Permits, except for G.S. 18B-902(g) and (h) and G.S. 18B-906.
- (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and 18B-1001.3.

Any provision of this Chapter which has not been made applicable to the Eastern Band of Cherokee Indians by this section shall act as a bar to engaging in any activity authorized by that Article or section.

(c) Alcoholic Beverages Which May Be Sold. – No alcoholic beverage may be sold on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians pursuant to this section which has not been approved for sale in this State by the North Carolina Alcoholic Beverage Control Commission.

(d) Establishment of a Tribal Commission. – In accordance with the provisions of 18 U.S.C. § 1161, the Eastern Band of Cherokee Indians is authorized to establish a tribal alcoholic beverage control commission to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal commission shall have exclusive authority to issue retail permits to retail establishments located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail outlets and premises. Permits issued by the tribal commission pursuant to this section shall be deemed issued by the State for the purposes of sales and delivery of beer and wine by wholesalers to the retail outlets located on Indian Country lands. The fees generated by the tribal alcoholic beverage control commission for the issuance of retail permits may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

(e) Establishment of Rules. – The tribal alcoholic beverage control commission shall adopt the rules of the North Carolina Alcoholic Beverage Control Commission regulating retail outlet activity.

(f) Authority of the North Carolina Alcoholic Beverage Control Commission. – The North Carolina Alcoholic Beverage Control Commission shall have the authority to enter into agreements with the tribal alcoholic beverage control commission to provide for the sale, delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control commission. The tribal alcoholic beverage control commission shall purchase spirituous liquor for resale by the tribal alcoholic beverage control commission exclusively from the North Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that such spirits are purchased by local boards. To the extent there is a conflict between the tribal alcoholic beverage control commission's authority or purpose and the North Carolina Alcoholic Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage Control Commission shall prevail.

(g) Discrimination. – The tribal alcoholic beverage control commission shall not discriminate against non-Indians in the application of the tribal ABC law. Non-Indians shall be entitled to apply for and receive ABC permits in the same manner as an Indian on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.

(h) Resolution of Contested Cases. – If the tribal alcoholic beverage control commission levies a fine or suspends or revokes a permit pursuant to the provisions of G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee Indians in this section, the permittee shall have the right of appeal of an agency final decision of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

(i) Failure to Comply With Laws of This State. – If the Eastern Band of Cherokee Indians fails to adopt the provisions of this Chapter, made applicable to the tribe by this section, by ordinance; fails to amend tribal ordinances to comply with amendments to the provisions of this Chapter, made applicable to the tribe by this section, within six months of passage of such amendments; or fails to comply with the provisions of this Chapter, made applicable to the tribe by this section, as required by 18 U.S.C. § 1161, the North Carolina Alcoholic Beverage Control Commission is authorized to terminate and prohibit future delivery of any alcoholic beverages from any person to the tribal alcoholic beverage control commission until the Eastern Band of Cherokee Indians complies with the provisions of this Chapter made applicable to the tribe by this section and 18 U.S.C. § 1161.

(j) Conflict of Laws. – If any provision of this section or its application conflicts with federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance with the federal law abrogates a right reserved to the State under the Constitution of the United States."

SECTION 4. G.S. 18B-1001(3) reads as rewritten:

"(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another on-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory

designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. It also authorizes the The holder of the permit is authorized to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Private clubs;
- e. Convention centers;
- f. Cooking schools;
- g. Community theatres;
- h. Wineries;
- i. Wine producers."

SECTION 5. G.S. 18B-1001(5) reads as rewritten:

"(5) On-Premises Fortified Wine Permit. – An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit also authorizes the permittee to transfer fortified wine, not more than four times per calendar year, to another on-premises fortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises fortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. It also authorizes the The holder of the permit is authorized to ship fortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Private clubs;
- d. Community theatres;
- e. Wineries;

f. Convention centers."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June,
2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:33 a.m. this 27th day of June, 2011